

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7119

Petitions to impose penalties upon Paragon )  
Construction Company re: probable Dig Safe )  
violations involving (1) a Vermont Gas )  
Systems, Inc., utility line located in South )  
Burlington, Vermont on 11/19/03; (2) a Verizon )  
New England Inc., d/b/a Verizon Vermont, )  
utility line located in Milton, Vermont, on )  
7/8/03; (3) an Adelphia Cable Communications )  
utility line located in Milton, Vermont, on )  
7/14/03; and (4) a Vermont Gas Systems, Inc., )  
utility line located in Milton, Vermont, on )  
8/4/03 & 9/30/03 )

Order entered: 1/12/2006

**I. INTRODUCTION**

This docket concerns alleged violations of Vermont's Underground Utility Damage Prevention System statute, 30 V.S.A. §§ 7001-7008 ("Dig Safe Statute"), as set forth in five Notices of Probable Violation ("NOPV") brought by the Vermont Department of Public Service ("Department") against Paragon Construction Company ("Paragon"), pursuant to Public Service Board Rule 3.800. First, on September 10, 2004, the Department filed an NOPV alleging that, on November 19, 2003, Paragon violated the provisions of 30 V.S.A. § 7006a, with regard to certain underground facilities of Vermont Gas Systems, Inc. ("VGS") located in South Burlington, Vermont (Dig Safe Notice ("DSN") #118). Second, on September 15, 2004, the Department filed an NOPV alleging that, on July 8, 2003, Paragon violated the provisions of 30 V. S. A. § 7006b, with regard to certain underground facilities of Verizon New England Inc., d/b/a Verizon Vermont ("Verizon"), utility line located in Milton, Vermont (DSN #119). Third, on September 15, 2004, the Department filed an NOPV alleging that on July 14, 2003, Paragon violated the provisions of 30 V.S.A. § 7006b, with regard to certain underground facilities of

Adelphia Cable Communications ("Adelphia") utility line located in Milton, Vermont (DSN #120). Fourth, on September 15, 2004, the Department filed an NOPV alleging that on August 4, 2003, Paragon violated the provisions of 30 V.S.A. § 7006b, with regard to certain underground facilities of VGS located in South Burlington, Vermont (DSN #121). Fifth, on September 15, 2004, the Department filed an NOPV alleging that on September 30, 2003, Paragon violated the provisions of 30 V.S.A. § 7006b, with regard to certain underground facilities of VGS located in South Burlington, Vermont (DSN #122).

Each NOPV sought Board imposition of specific penalties, and in each case, Paragon objected. However, on December 13, 2005, the parties filed a stipulation in full settlement of this docket, for which Public Service Board ("Board") approval now is sought.

For the reasons set forth below, I recommend that the Board approve the settlement stipulation filed by the parties.

## **II. FINDINGS**

Pursuant to the provisions of 30 V.S.A. § 8, and based on the record and evidence before me, I present the following findings to the Board.

1. DSN #118 alleged that Paragon failed "to maintain utility [VGS] markings as required and failed to request a remarking of facilities after the original markings were lost." DSN #118 NOPV at 3.
2. DSN #119 alleged that Paragon failed "to take reasonable precautions to avoid damage to underground facilities when engaged in excavating activities with 18" on either side of a marked facility." DSN #119 NOPV at 2.
3. DSN #120 alleged that Paragon failed "to take reasonable precautions to avoid damage to underground facilities when engaged in excavating activities with 18" on either side of a marked facility." DSN #120 NOPV at 2.
4. DSN #121 alleged that Paragon failed "to take reasonable precautions to avoid damage to underground facilities when engaged in excavating activities with 18" on either side of a marked facility." DSN #121 NOPV at 2.

5. DSN #122 alleged that Paragon failed "to take reasonable precautions to avoid damage to underground facilities when engaged in excavating activities with 18" on either side of a marked facility." DSN #122 NOPV at 2.

6. With regard to DSN #118, the Department requested that the Board impose a monetary penalty. DSN #118 NOPV at 3.

7. With regard to each of the other NOPVs, the Department requested that the Board impose a monetary penalty and require Paragon to attend an underground damage prevention seminar approved by the Department. DSN #119 NOPV at 3; DSN #120 NOPV at 3; DSN #121 NOPV at 3; DSN #122 at 3.

8. On December 13, 2005, the parties filed a Stipulation and Agreement ("Stipulation") that resolves all five NOPVs that are the subject of this docket. Stipulation at 1-2.

9. The Stipulation provides that Paragon will pay a civil penalty in the amount of Three Thousand Dollars (\$3,000.00). Stipulation at 2.

10. The Stipulation further provides that "an officer, director or employee of Paragon that is actively involved in excavation activities shall attend a Department-approved Underground Damage Prevention Seminar" and that the Department will notify Paragon of the date(s), time(s) and location(s) of such. Stipulation at 2.

### **III. DISCUSSION AND RECOMMENDATION**

The allegations made in this docket indicate that on five separate occasions Paragon violated Vermont's Dig Safe Statute by either failing to maintain necessary markings, or failing to take reasonable precautions to avoid damage to underground facilities when engaged in excavating activities with 18" on either side of a marked facility.

Although Paragon disputed the allegations made in DSN #118,<sup>1</sup> it did not specifically deny the allegations in any of the other four NOPVs. Furthermore, 30 V.S.A. §§ 7001-7008 and Public Service Board Rule 3.800 provide for imposition of penalties for per se violations of the Dig Safe statute.

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1. Letter of Courtland Roth Perry, dated September 8, 2004.

The Stipulation filed by the parties imposes a financial penalty upon Paragon for its failure to comply with the requirements of Vermont's Dig Safe statute, and this penalty falls within the parameters set by 30 V.S.A. § 7008.<sup>2</sup> The Stipulation also imposes an educational requirement upon Paragon that is designed to help Paragon understand the Dig Safe system as well as the importance of compliance with Dig Safe standards, and thereby enhance prevention of future underground utility facility mishaps. Therefore, I recommend that the Board approve the Stipulation.

This Proposal for Decision has not been circulated to the parties because they have waived their rights under 3 V.S.A. § 811 to file written comments or present oral argument thereon.<sup>3</sup>

Dated at Montpelier, Vermont, this 12<sup>th</sup> day of January, 2006.

s/Judith M. Kasper

Judith M. Kasper  
Hearing Officer

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2. Stipulation at 2; 30 V.S.A. § 7008.

3. Stipulation at 3.

#### IV. ORDER

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The findings and recommendation of the Hearing Officer are hereby adopted.
2. Within ten (10) days of the date of this Order, Paragon Construction Company ("Paragon") shall pay a civil penalty in the amount of Three Thousand Dollars (\$3,000.00) by submitting to the Public Service Board a check in that amount made payable to the State of Vermont.
3. An officer, director or employee of Paragon who is actively involved in excavation activities shall attend an Underground Damage Prevention Seminar at such time and place as designated by the Vermont Department of Public Service.

Dated at Montpelier, Vermont, this 12<sup>th</sup> day of January, 2006.

s/James Volz	)	PUBLIC SERVICE
	)	
	)	
s/David C. Coen	)	BOARD
	)	
	)	
s/John D. Burke	)	OF VERMONT

OFFICE OF THE CLERK

FILED: January 12, 2006

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*NOTICE TO READERS: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: Clerk@psb.state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*